

110TH CONGRESS  
1ST SESSION

# S. 2343

To amend the Real Estate Settlement Procedures Act to require mortgage originators to make their fees more transparent.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 13, 2007

Mr. REED introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend the Real Estate Settlement Procedures Act to require mortgage originators to make their fees more transparent.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Real Estate Trans-  
5       parency Act of 2007”.

6       **SEC. 2. GREATER TRANSPARENCY OF SETTLEMENT FEES.**

7       (a) IN GENERAL.—Section 4 of the Real Estate Set-  
8       tlement Procedures Act of 1974 (12 U.S.C. 2603) is  
9       amended—

(1) in subsection (a), in the first sentence, by striking “The Secretary,” and inserting “PROVISION OF SETTLEMENT STATEMENT.—The Secretary,”;

(2) in subsection (b)—

(A) in the first sentence—

(i) by striking “The form” and inserting “ADVANCE INSPECTION OF SETTLEMENT STATEMENT.—The form”; and

(ii) by striking “, except” and all that follows through “available at such time”; and

(B) in the second sentence—

(i) by striking “Upon the request of the borrower to inspect the form prescribed under this section during the” and inserting “At least 1”;

(ii) by striking “shall permit the” and inserting “shall provide a completed, written copy of the settlement statement to the”; and

(iii) by striking “to inspect those” and all that follows through “preceding day”; and

(3) by adding at the end the following:

“(c) AGREEMENT FOR ORIGINATOR FEES.—

1           “(1) NOTICE OF FEES.—Not later than 3 days  
2           after a person applies for a federally related mort-  
3           gage loan, the mortgage originator of such loan shall  
4           provide to that person a written agreement itemizing  
5           all of the fees that person may be charged by the  
6           mortgage originator, including any origination fees,  
7           underwriting fees, broker fees, and any other fees to  
8           be charged at or before the settlement of such loan  
9           to be paid to the mortgage originator. Bona fide dis-  
10          count points payable by such person to reduce the  
11          interest rate of such loan need not be included on  
12          any originator fees agreement under this paragraph.

13           “(2) METHOD OF PAYMENT.—

14           “(A) IN GENERAL.—Each originator fee  
15           agreement under paragraph (1) shall set out  
16           the following 3 methods for the payment of the  
17           fees described in any such agreement:

18                   “(i) Payment in cash before or at set-  
19                   tlement.

20                   “(ii) Adding such fees into the total  
21                   loan amount to be borrowed.

22                   “(iii) Increasing the interest rate of  
23                   the loan.

24           “(B) BORROWER’S CHOICE OF PAYMENT  
25           METHOD.—Each applicant for a federally re-

lated mortgage loan, in determining how to pay any of the fees described in an originator fees agreement under paragraph (1), shall choose one of the payment methods described under subparagraph (A), except that the applicant may choose to combine the payment methods described under clauses (i) and (ii) of subparagraph (A).

“(C) REQUIRED EXPLANATION.—

“(i) WRITTEN.—Each originator fee agreement under paragraph (1) shall include a written explanation of each of the payment options listed in subparagraph (A), along with a clear and concise illustration of the effect of each option on the amount borrowed, the interest rate, the payments required on the loan, and any other loan terms which might be affected by such option.

“(ii) ORAL.—Each mortgage originator of a federally related mortgage loan shall explain to each applicant for such a loan each of the payment options listed in subparagraph (A) before accepting any payment from that person.

1           “(D) REQUIRED SIGNATURE.—Before any  
2           applicant for a federally related mortgage loan  
3           is obligated to pay any of the fees described in  
4           the originator fees agreement under paragraph  
5           (1), the person shall have—

6                   “(i) agreed to and signed the origi-  
7                   nator fees agreement described under  
8                   paragraph (1); and

9                   “(ii) exercised the option for deter-  
10                  mining the method of payment for such  
11                  fees.

12          “(d) EARLY SETTLEMENT STATEMENT.—

13               “(1) IN GENERAL.—Not later than 3 days after  
14               a person applies for a federally related mortgage  
15               loan, the mortgage originator of such loan shall pro-  
16               vide to that person a written early settlement state-  
17               ment of all of the settlement costs to be charged to  
18               that person at or before settlement. The early settle-  
19               ment statement shall be in the same or a similar  
20               form as the statement of settlement costs provided  
21               to the person pursuant to subsection (a).

22               “(2) REQUIRED INCLUSIONS.—Each early set-  
23               tlement statement under this subsection shall in-  
24               clude an itemization of the following:

1           “(A) All fees agreed to by the applicant of  
 2           a federally related mortgage loan pursuant to  
 3           the originator fees agreement described under  
 4           subsection (c)(1).

5           “(B) All fees to be charged to that appli-  
 6           cant by independent third parties, including  
 7           government agencies at or before settlement of  
 8           the loan, plus all escrows reserves which may be  
 9           required of that person.

10       “(e) BORROWER LIABILITY FOR FEES.—No bor-  
 11       rower shall be liable for any fees which are not disclosed  
 12       on an early settlement statement, except that the borrower  
 13       is liable for such fees if—

14           “(1) the total amount charged for fees imposed  
 15       by independent third parties is—

16           “(A) not more than 10 percent greater  
 17       than that stated in the early settlement state-  
 18       ment; or

19           “(B) greater than that allowed under sub-  
 20       paragraph (A) because bona fide and reason-  
 21       able expenses were incurred by such third par-  
 22       ties for unanticipated inspection, appraisal, sur-  
 23       vey, or flood certification of the home which  
 24       was the subject of such loan;

1           “(2) the mortgage originator provides a reason-  
2           able explanation of the circumstances surrounding  
3           the settlement of the loan of the borrower which  
4           were different than anticipated by the mortgage  
5           originator when the statement was provided; and

6           “(3) the mortgage originator does not engage in  
7           a pattern or practice of providing early settlement  
8           statements which disclose individual fees of inde-  
9           pendent third parties in different amounts than ac-  
10          tually charged at settlement.

11          “(f) LIABILITY FOR FAILURE TO COMPLY.—

12           “(1) IN GENERAL.—Whoever fails to comply  
13           with any provision of this section shall be liable to  
14           the borrower for an amount equal to the sum of—

15                   “(A) any actual damages to the borrower  
16                   as a result of the failure; and

17                   “(B) \$5,000 for each such instance of non-  
18                   compliance.

19           “(2) COURT COSTS.—In addition to any amount  
20           under paragraph (1), in the case of any successful  
21           action brought by a borrower under this subsection,  
22           such borrower shall be reimbursed for the costs of  
23           the action, together with any attorneys fees incurred  
24           in connection with such action as the court may de-  
25           termine to be reasonable under the circumstances.

1       “(g) DEFINITION.—As used in this section, the term  
2 ‘mortgage originator’—

3               “(1) means any person who, for direct or indi-  
4 rect compensation or gain, or in the expectation of  
5 direct or indirect compensation or gain—

6               “(A) takes a residential mortgage loan ap-  
7 plication; or

8               “(B) assists a consumer in obtaining or  
9 applying to obtain a residential mortgage loan;  
10 and

11              “(2) includes any person who makes loans di-  
12 rectly or brokers loans for others.”.

13       (b) CONFORMING AMENDMENT.—Section 5(c) of the  
14 Real Estate Settlement Procedures Act of 1974 (12  
15 U.S.C. 2604(c)) is hereby repealed.

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